

FILED

DEC 10 2008

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF INSURANCE COMMISSIONER

In Re:

CHICAGO TITLE INSURANCE COMPANY,

An authorized insurer

Docket No. 2008-INS-0002
OIC No. D07-308

CHICAGO TITLE INSURANCE
COMPANY'S LIMITED MOTION TO
STRIKE DECLARATION OF ALAN
MICHAEL SINGER

I. RELIEF REQUESTED

Chicago Title Insurance Company ("CTIC") moves to strike the Declaration of Alan Michael Singer in Support of Petition for Review of Initial Order (the "Singer Decl.") to the extent offered as evidentiary support of the Office of the Insurance Commissioner's ("OIC") Petition for Review of Initial Order (the "Review Petition").

II. BACKGROUND AND STATUS OF PROCEEDING

This matter involves a Petition for Review of an Order entered by Administrative Law Judge Burdue. On November 19, 2008, the OIC filed two pleadings – (1) OIC's Brief in Support of Review of Initial Order and (2) Declaration of Alan Michael Singer in Support of Petition for Review of Initial Order. Mr. Singer states that the information contained in his declaration is "true

1 and correct", that he is "competent to testify" and that the declaration is "based upon my personal
2 knowledge." See Singer Decl. at ¶1.

3 **III. ARGUMENT**

4 The evidence to be considered by this court is restricted to the evidence submitted to the
5 Administrative Law Judge. See RCW 34.04.464(5). As construed by the Washington Court of
6 Appeals, this statute

7 does not provide that the reviewing officer may go outside the record or take additional
8 evidence . . . The negative implication from the statute's failure to give the reviewing officer
9 express power to take additional evidence is that the reviewing officer cannot take additional
evidence outside the record established by the presiding officer.

10 *Towle v. Dep't of Fish & Wildlife*, 94 Wn.App. 196, 205-6, 971 P.2d 591 (1999).

11 Accordingly, the declaration of Alan Michael Singer must be stricken as evidence.

12 Although captioned a declaration and containing recitals consistent with that label, i.e.
13 personal knowledge and competence to testify, the declaration is more akin to a brief or
14 memorandum. Surely it cannot be true that Mr. Singer could testify that Judge Burdue
15 "misapprehends the issues presented", that her findings are "clearly erroneous" nor could he testify
16 as to the adequacy of the evidence. See Singer Decl. at ¶7, ¶12, and ¶22 respectively.

17 **IV. CONCLUSION**

18 For the reasons set forth herein, CTIC respectfully requests that the Singer Decl. be stricken
19 as a declaration and not considered for evidentiary purposes by the Reviewing Officer.

20 DATED this 10th day of December, 2008.

21
22 K & L GATES LLP

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24 By _____
25 Kimberly W. Osenbaugh, WSBA # 5307
26 David C. Neu, WSBA #33143
Attorneys for Chicago Title Insurance Company

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CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party-to or interested-in the above-entitled action, and competent to be a witness herein.

On the date below, I caused to be served:

- *Chicago Title Insurance Company's Motion to Strike Declaration of Alan M. Singer*

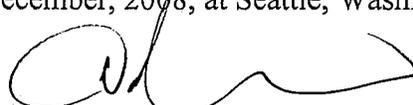
in the manner indicated:

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EXECUTED this 10th day of December, 2008, at Seattle, Washington.



David C. Neu